

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JAMORAL ANTONNEE MCCORKLE,)	
)	
Petitioner,)	
)	
v.)	1:11CV208
)	1:06CR276-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On May 11, 2016, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed conditional objections [Doc. #77] to the Recommendation within the time limit prescribed by Section 636. The Court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation [Doc. #75], which is affirmed and adopted.

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss [Doc. #50] is GRANTED to the extent that Petitioner challenges his career offender enhancement, but that the Motion to Dismiss is treated as WITHDRAWN as to Petitioner's challenge to his Conviction on Count Two, that Petitioner's Motion [Doc. #34] to vacate, set aside or correct sentence is GRANTED as to his challenge to his conviction on Count Two but DENIED otherwise, that Petitioner's Motion to Amend [Doc. #74] is GRANTED to the extent that his arguments have

been considered, but otherwise DENIED, that the Amended Judgment [Doc. #33] is VACATED, that the conviction on Count Two of the Indictment [Doc. #1] is VACATED and that Count Two is DISMISSED, that any money paid by Petitioner toward the \$100.00 special assessment be returned to him or credited to him, and that Petitioner's sentence on Count One is VACATED and that the Clerk is directed to set this matter for resentencing on Count One. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This the 19th day of October, 2016.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge